VEARL MARTIN and/or
APOLLO MINERALS CORPORATION

IBLA 75-24 Decided December 31, 1974

Appeal from decision (AD-185-74, V-943) of the Utah State Office, Bureau of Land Management (BLM), declaring appellants' mining claims null and void ab initio.

Affirmed.

1. Administrative Procedure: Hearings -- Mining Claims: Determination of Validity -- Mining Claims: Hearings -- Rules of Practice: Hearings

   In a Departmental proceeding to determine the validity of a mining claim, an evidentiary hearing under the Administrative Procedure Act is required only if there is a disputed determinative question of fact; where the validity of a claim turns on the legal effect to be given facts of record when the claim was located no hearing is required.

2. Mining Claims: Generally -- Mining Claims: Withdrawn Land -- Mining Claims: Special Acts -- Withdrawals and Reservations: Reclamation Withdrawals -- Withdrawals and Reservations: Revocation and Restoration

   It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970).

APPEARANCES: Melvin D. Rueckhaus, Esq., Rueckhaus & Rueckhaus, P.C., Albuquerque, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Vearl Martin and/or Apollo Minerals Corporation appealed from a decision by the Utah State Office, Bureau of Land Management, dated March 26, 1974, declaring null and void ab initio all or portions of certain listed lode mining claims, referred to as the Apollo Group, lying within the exterior boundaries of the Glen Canyon National Recreation Area in Ts. 34 and 35 S., Rs. 13 and 14 E., S.L.B. & M., Utah, for the reason that the mining locations were not perfected by performance of the condition precedent set forth in the order opening the lands in the reclamation withdrawal to mineral entry and location pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970).

The records show that in June 1954 the lands involved, among other lands, were the subject of a first form reclamation withdrawal order issued under authority of the Act of June 17, 1902, 43 U.S.C. § 416 (1970), which precluded mining location, entry and patent. 19 F.R. 3799. These lands under the provisions of the Act of April 23, 1932, 43 U.S.C. § 154 (1970), also in June 1954, were opened to mining location, entry, and patent subject to the condition precedent, as authorized by the Act, that the express stipulation in the opening order with regard to each mining location thereon "[b]e executed and acknowledged and recorded in the county records and in the United States Land Office at Salt Lake City, Utah, before location is made * * *." 19 F.R. 3628. The required stipulation reads:

> This location is made subject to the provision that if and when the land is actually required for reclamation purposes, it may be utilized by the United States without payment, and any structures or improvements placed on the land which may interfere with contemplated reclamation works will be removed or relocated without expense to the United States, its successors or assigns.

The mining claims listed in the decision below were located during the period October 1, 1958, through May 29, 1971, covering lands in whole or in part lying within the boundaries of the Glen Canyon National Recreation Area in the aforesaid townships and ranges.

Public Law 92-593, 86 Stat. 1311, enacted on October 27, 1972, establishing the Glen Canyon National Recreation Area withdrew, subject to valid existing rights, the lands within the described area, including the lands here involved, from location, entry, and patent under the United States Mining Laws.

The decision appealed from stated that diligent searches of the records of San Juan County, Utah, and of the Bureau of Land Management records in Salt Lake City, Utah, were made and no evidence of recordations of the required stipulations were uncovered. Since the express stipulation contained in the opening order was not recorded in the offices where required to be recorded for each and every listed mining claim, the decision below declared those mining claims null and void ab initio.

It is asserted on appeal, in essence, that the Utah State Office decision deprives appellants of property without due process of law in that they were not served with notice or given an opportunity to be heard; compliance with the opening order is a question of fact and law which entitles appellants to a hearing; the decision was issued by a person acting outside the capacity of an administrative law judge, and such BLM employee is in no position to hold a fair and impartial hearing. Appellants further contend that Departmental Order 2515, section 3 of the Act of Congress of June 17, 1902, and the Bureau's opening order are in violation of due process accorded by the Constitution.

The Congress has the power to dispose of and make all the needful rules and regulations respecting property belonging to the United States. U. S. Const. Art. IV § 3. The determination of validity of claims against the public lands was entrusted to the General Land Office in 1812 (2 Stat. 76) and transferred to the Department of the Interior on its creation in 1849. 9 Stat. 395. Since that time, the Department has been granted plenary authority over the administration of public lands, including mineral lands; and it has been given broad authority to issue regulation concerning them. 1/ Best v. Humboldt Placer Mining Co., 371 U.S. 334, 336 (1963).

By Departmental Order 2515, dated April 7, 1949, the Secretary of the Interior delegated his authority to the Commissioner or Assistant Commissioner of Reclamation, with the concurrence of the Bureau of Land Management, to withdraw public lands for reclamation purposes pursuant to the Reclamation Act of June 17, 1902, supra. It was under the delegated authority that the Commissioner of Reclamation, with the concurrence of the Director, Bureau of Land Management, ordered the first form reclamation withdrawal, as provided by section 3 of the Act of June 17, 1902, of the lands described in the order published in 19 F.R. 399. Accordingly, it is clear that the lands here involved, among other lands described in the order, were effectively withdrawn under the first form reclamation withdrawal in exercise of the

1/ See 30 U.S.C. § 22 (1970); 43 U.S.C. § 2 (1970); 43 U.S.C. § 1201 (1970); 43 U.S.C. § 1457 (1970).

delegated power conferred on the Commissioner of Reclamation by the Secretary of the Interior.

It is well established that a mining claim located on land subject to a first form reclamation withdrawal initiates no rights in the locator and is invalid from its purported inception. Frank Zappia, 10 IBLA 178 (1973); 11 IBLA 111 (1973); A. L. Snyder, 75 L.D. 33 (1968); R. J. Walter, A-27243 (March 15, 1956); James C. Reed, 50 L.D. 687 (1924).

The Act of April 23, 1932, supra, authorized the Secretary of the Interior to open lands withdrawn for reclamation purposes to location, entry and patent under the general mining laws,

> * * * reserving such ways, rights, and easements over or to such lands as may be prescribed by him * * * and/or the said Secretary may require the execution of a contract by the intending locator * * * as a condition precedent to the vesting or any rights in him, when in the opinion of the Secretary same may be necessary for the protection of the irrigation interests. * * * The Secretary may prescribe the form of such contract which shall be executed and acknowledged and recorded in the county records and United States local land office by any locator * * * of such land before any rights in * * * [his] * * * favor attach thereto * * *. Notice of such reservation or the necessity of executing such prescribed contract shall be filed in the Bureau of Land Management and in the appropriate local land office, and notations thereof shall be made upon the appropriate tract books, and any location or entry thereafter made upon or for such lands, and any patent therefor shall be subject to the terms of the contract and/or to such reserved ways, rights, or easements and such entry or patent shall contain a reference thereto. (Emphasis added.)

It was pursuant to the authority granted to the Secretary by, and under the provisions of, the Act of April 23, 1932, that the Director, Bureau of Land Management, the Secretary's delegate, issued the order published in 19 F.R. 3628 in June 1954, opening the described lands in the first form reclamation withdrawal to location, entry, and patent under the mining laws,

> * * * subject to * * * the condition that a stipulation * * * [quoted above] * * * [b]e executed and acknowledged and recorded in the county records and in the United States Land Office at Salt Lake City, Utah, before location is made * * *.

The execution and recording of the express stipulation is clearly a condition precedent to the validity of any of the mining locations here involved.

The lands involved were the subject of the reclamation withdrawal order and the condition precedent set out in the opening order. Both orders were published in the Federal Register in June 1954, more than four years prior to Appellants' earliest purported mining location. The Bureau of Land Management maintains an elaborate system of public records of the status of the public lands. One who fails to inspect the status of public land in which he is seeking an interest is negligent at his peril, as he is charged with knowledge of the law affecting those lands and the record of its status as well. James C. Forsling, 56 I.D. 281, 285-86 (1938); United States v. Alexander, 17 IBLA 421, 432 (1974).

[1] We turn to appellants' assertion of lack of jurisdiction on the part the State Office employee who rendered the decision below without notice and hearing. As previously stated, under the plenary powers granted to the Department over the administration of the public lands, the Secretary of the Interior (or his delegate) has authority on his own motion to determine the validity of mining claims. Cameron v. United States, 252 U.S. 450, 459-460 (1920). In a Departmental proceeding to determine the validity of a mining claim, an evidentiary hearing under the Administrative Procedure Act is required only if there is a disputed determinative question of fact; where the validity of a claim turns on the legal effect to be given facts of record when the claim was located no hearing is required. The Dredge Corporation, 65 I.D. 336 (1958); and cases cited therein, aff'd sub nom. Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). This distinction was adhered to in Frank Zappia, supra; Foster Mining and Engineering Co., 7 IBLA 299 79 I.D. 599 (1972); United States v. Consolidated Mines & Smelting Co., Ltd., 455 F.2d 432, 453 (9th Cir. 1971). Accordingly, the State Office properly rendered a determination without a hearing because the validity of the mining locations in the instant case turned on the legal effect to be given facts of record (a question of law). The decision appealed from was served on appellants. It notified them of the determination with the reasons therefor and informed them of the right of appeal to the Board of Land Appeals within 30 days of receipt of that decision. In the circumstances of this case, this was sufficient. See United States v. Consolidated Mines & Smelting Co., Ltd., supra.

In any event, appellants have had a full opportunity to present to this Board all matters considered pertinent to their contentions. Appellants, having had an opportunity to present their case fully at the highest level in the Department, cannot rightly complain of defective consideration below. Northern Pacific Railway Co., 62 I.D. 401, 411 (1955).

[2] During the period the lands involved were open to mineral location, the purported mining locations were not perfected because the locators failed to execute and record in the county records and in the Bureau of Land Management, Salt Lake City, Utah, the stipulation for each mining location required by the opening order as a condition precedent to the vesting of any rights in the locator. Consequently, the decision below properly declared the listed mining claim locations null and void ab initio. Frank Zappia, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Martin Ritvo
Administrative Judge

Frederick Fishman
Administrative Judge